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Appln. No. 10/700,950
Amendment dated May 12, 2004
Reply to Office Action mailed April 14, 2004

REMARKS

Reconsideration is respectfully requested.

Claims 1 through 4 and 6 through 11 remain in this application. Claim 5 has been cancelled.

The Examiner's rejections will be considered in the order of their occurrence in the Office Action.

Paragraphs 1-3 of the Office Action

Claims 1-11 have been rejected under 35 U.S.C. §102(b) based upon a public use or sale of the invention.

In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. 37 CFR 1.104(c)(2).

It is submitted that the entirety of the classified patents previously issued by the Patent and Trademark Office is at the command of the Examiner. However, in the present case, the Examiner has not provided the applicant with any prior art patents or other reproducible evidence showing the "a bypass assembly being operationally coupled to said processing assembly such that said bypass assembly is adapted for being operationally coupled between said processing assembly and the telephone jack, said bypass assembly receiving signals from said telephone jack, said bypass assembly being adapted for being operationally coupled to a telephone, said bypass assembly actuating said processing assembly to allow the call from the user to be directed to said speaker member when said bypass assembly receives a code from the user after the user has called, said bypass assembly being adapted for permitting the call from the user to go to the telephone when said bypass assembly fails to receive the code from the user" is a known equivalent to existing prior art or an obvious combination of known features taken from the prior art. Instead the Examiner has merely provided an

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unsupported statement apparently based on the personal beliefs or personal knowledge of the Examiner.

"If the knowledge is of such notorious character that official notice can be taken, it is sufficient so to state" *In re Malcolm*, 129 F.2d 529, 54 USPQ 235 (CCPA 1942). If the applicant traverses such an assertion [of official notice by the examiner,] the examiner should cite a reference in support of his or her position. MPEP 2144.03.

Therefore, it is submitted that the Examiner should now produce at least one prior art reference in support of the assertion that "a bypass assembly being operationally coupled to said processing assembly such that said bypass assembly is adapted for being operationally coupled between said processing assembly and the telephone jack, said bypass assembly receiving signals from said telephone jack, said bypass assembly being adapted for being operationally coupled to a telephone, said bypass assembly actuating said processing assembly to allow the call from the user to be directed to said speaker member when said bypass assembly receives a code from the user after the user has called, said bypass assembly being adapted for permitting the call from the user to go to the telephone when said bypass assembly fails to receive the code from the user" is in fact well known in the art.

"When a rejection is based on facts within the personal knowledge of the examiner, the data should be stated as specifically as possible, and the facts *must* be supported, when called for by the applicant, by an affidavit from the examiner. Such an affidavit is subject to contradiction or explanation by the affidavits of the applicant and other persons." (emphasis added) 37 CFR 1.104(d)(2). See also MPEP 2144.03.

Further, in the absence of any prior art patent references and in accordance with 37 CFR 1.104(d)(2), applicant now calls for an affidavit in support of the Examiner's assertions of obviousness to allow the applicant the opportunity to directly address and refute the assertion of obviousness.

The examiner may take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being "well known" in the art. *In re Ahlert*, 424 F.2d 1088, 1091,

Appln. No. 10/700,950

Amendment dated May 12, 2004

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165 USPQ 418, 420 (CCPA 1970). However, "[t]he facts so noticed serve to 'fill the gaps' which might exist in the evidentiary showing and should not comprise the principle evidence upon which a rejection is based. *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420-421 (CCPA 1970). See also MPEP 2144.03.

It is submitted that the Examiner has improperly used the unsupported assertion that "a bypass assembly being operationally coupled to said processing assembly such that said bypass assembly is adapted for being operationally coupled between said processing assembly and the telephone jack, said bypass assembly receiving signals from said telephone jack, said bypass assembly being adapted for being operationally coupled to a telephone, said bypass assembly actuating said processing assembly to allow the call from the user to be directed to said speaker member when said bypass assembly receives a code from the user after the user has called, said bypass assembly being adapted for permitting the call from the user to go to the telephone when said bypass assembly fails to receive the code from the user" is well known in the art as the principle evidence of obviousness. Further, the Office Action directs attention to U.S. Patent 4,706,274 to Baker as an instance of the use of speaker phones. Attention is directed to column 7, lines 19 through 37, which clearly requires that a user be positioned at the control unit to actuate the answer button or the intercom call button to allow use of the speaker phone for listening to the call or answering the intercom call from the handset which contradicts that claimed by the applicant which allows the speaker member to be actuated from a remote location by use of a code transmitted over the telephone line to allow the call to be transmitted audibly from the speaker member. Therefore, absent prior art references as principle evidence of obviousness, the claims are believed to be allowable.

Claims 2 through 4 and 6 through 10 are dependent upon claim 1, particularly as amended, and therefore incorporate the requirements of claim 1. Thus, claims 2 through 4 and 6 through 10 are also believed to be allowable over the cited reference.

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Claim 5 has been cancelled.


Withdrawal of the §102(b) rejection of claims 1-11 is therefore respectfully requested.

CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

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